



County of San Bernardino
FLOOD CONTROL DISTRICT

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code		SC	Dept.	A	Contract Number	
County Department Public Works			Dept. 099	Orgn. 099	Contractor's License No.		
County Department Contract Representative Naresh P. Varma, Chief, Env. Mgmt. Div.			Telephone 387-8109		Total Contract Amount \$1,225,260.00		
Contract Type <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:							
If not encumbered or revenue contract type, provide reason:							
Commodity Code 92000		Contract Start Date		Contract End Date		Original Amount	Amendment Amount
Fund RLF	Dept. 099	Organization 099	Appr. 200	Obj/Rev Source 2445	GRC/PROJ/JOB No. 30F01343	Amount \$1,225,260	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
Project Name NPDES – Integrated MS4 Administration Solution Database				Estimated Payment Total by Fiscal Year			
				FY	Amount	I/D	

THIS CONTRACT is entered into in the State of California by and between the San Bernardino County Flood Control District, hereinafter called the District, and

Name Camp Dresser & McKee Inc. hereinafter called CDM

Address 2920 Inland Empire Blvd., Suite 108

Ontario, CA 91764-4802

Telephone (909) 945-3000 Federal ID No. or Social Security No. 04-2473650

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WITNESSETH

Whereas

Congress in 1987 amended Section 402 of the Federal Clean Water Act [33 U.S.C.A. 1342(p)] to require the federal Environment Protection Agency (EPA) to promulgate regulations for applications for permits for storm water discharges; and

Whereas

These EPA regulations require National Pollutant Discharge Elimination System (NPDES) permits for discharges from municipal storm sewers on a system-wide or jurisdiction-wide basis; and

Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

Whereas

These permit regulations require the control of pollutants from stormwater discharges by requiring a NPDES Permit for the discharge of storm waters into waters of the United States; and

Whereas

The California State Water Resources Control Board (STATE BOARD), as designee of the EPA, has delegated authority to the Regional Water Quality Control Board – Santa Ana Region (REGIONAL BOARD) for administration of the NPDES Storm Water permit within the boundaries of their Region; and

Whereas

The REGIONAL BOARD issued NPDES Permit Number CAS618036 (PERMIT) on April 26, 2002 to the cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa (CITIES), the County of San Bernardino (COUNTY), and the San Bernardino County Flood Control District (DISTRICT) as permittees for the regulation of storm waters; and

Whereas

The DISTRICT has been designated as the Principal Permittee in the PERMIT; and

Whereas

The COUNTY and the CITIES have been designated as the Co-permittees in the PERMIT; and

Whereas

The PERMIT requires the CITIES, the COUNTY, and the DISTRICT to control pollutants in storm water discharges through prohibition of illegal discharges and illicit connections to the municipal separate storm sewer system (MS4), by controlling spills, by maintaining the storm drain system, by requiring compliance with Storm Drain Ordinances, and by conducting inspections of construction sites, commercial sites, industrial sites, and storm drain systems to verify that compliance is being achieved within their jurisdictions; and

Whereas

The PERMIT requires the CITIES, the COUNTY, and the DISTRICT to develop and to maintain databases of information including an inventory of facilities and sites subject to provisions of the PERMIT and the status of each facility and site; and

Whereas

Countywide consistency in the required databases will promote continued cooperation between the CITIES, the COUNTY, and the DISTRICT who have interconnected municipal storm drain systems; and

Whereas

The CITIES, the COUNTY and the DISTRICT desire to cooperatively develop an Integrated MS4 Administration Solution; and

Whereas

The DISTRICT, with the assistance from the CITIES and the COUNTY, has selected the CONSULTANT to provide professional services for development of the Integrated MS4 Administration Solution; and

Whereas

The CONSULTANT is willing and able to perform such professional services for the DISTRICT within the basic terms and conditions hereinafter set forth; and

Whereas

The purpose of this Professional Services Agreement (AGREEMENT) is to authorize the performance of professional services with respect to the development of the Integrated MS4 Administration Solution and related services;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, it is hereby agreed that the CONSULTANT shall serve as the DISTRICT's professional services representative for the assignment to

which this AGREEMENT applies, and will give consultation and advice to the DISTRICT during the performance of his services on the terms and conditions hereinafter set forth.

SECTION 1 DEFINITIONS

Wherever used in this AGREEMENT, the following terms have the meaning ascribed to them:

- 1.1 BOARD: The Board of Supervisors of the San Bernardino County Flood Control District.
- 1.2 CITIES: The cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa.
- 1.3 CONSULTANT: The engineering firm, Camp Dresser & McKee Inc. (CDM), retained to perform professional services and duties as described and requested herein.
- 1.4 COUNTY: The County of San Bernardino.
- 1.5 MS4: the Municipal Separate Storm Sewer System as defined by the federal Clean Water Act, also referred to as the "storm drain system."
- 1.6 DISTRICT: The San Bernardino County Flood Control District.
- 1.7 EPA: The Federal Environmental Protection Agency.
- 1.8 PERMIT: Order No. R8-2002-0012, NPDES Number CAS618036, issued on April 26, 2002, by the California Regional Water Quality Control Board – Santa Ana Region.
- 1.9 PROJECT: The work described in Exhibit "A".
- 1.10 REGIONAL BOARD: The California Regional Water Quality Control Board – Santa Ana Region.
- 1.11 STATE BOARD: The California State Water Resources Control Board.

SECTION 2 BASIC SERVICES OF CONSULTANT

- 2.1 Forthwith undertake and complete the PROJECT in accordance with Exhibit "A", attached and incorporated herein, and with current applicable DISTRICT statues, regulations, ordinances and written guidelines, within the applicable professional standard of care.
- 2.2 Provide coordination of submittals/approvals to those governmental agencies having jurisdiction over the project, as set forth in Exhibit "A". Budgeted hours and other direct expenses under Scope of Work for said coordination shall be per Section 5.

SECTION 3 DISTRICT'S RESPONSIBILITIES

DISTRICT shall:

- 3.1 Furnish to CONSULTANT, as required, and if presently available for performance of CONSULTANT'S Scope of Work, existing data, reports, topographic surveys and any other pertinent information related to the PROJECT.
- 3.2 Provide the CONSULTANT with up-to-date information as it becomes available which may have an effect on the services being performed by the CONSULTANT for the PROJECT.

- 3.3 Obtain access to and make provisions for the CONSULTANT to enter upon public and private lands as required in the performance of the CONSULTANT's work under this AGREEMENT.
- 3.4 Examine all studies, reports, sketches, estimates, drawings, proposals and other documents presented by the CONSULTANT's work under this AGREEMENT.
- 3.5 Designate in writing a person or persons to act as representative of the DISTRICT with respect to the work to be performed under this AGREEMENT. Such personnel shall transmit instructions, receive information and interpret policies and decisions of the DISTRICT with respect to the PROJECT and the work covered by this AGREEMENT.
- 3.6 Give prompt written notice to the CONSULTANT whenever the DISTRICT observes or otherwise becomes aware of any defect in the PROJECT.
- 3.7 Obtain, with the CONSULTANT's assistance, approval of all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from such other individuals or bodies as may be necessary, for completion of the PROJECT.

SECTION 4 PERIOD OF SERVICE

4.1 Term of AGREEMENT

This AGREEMENT shall continue in full force until terminated by mutual AGREEMENT of the parties in writing or until terminated in accordance with SECTION 6. The term of this Agreement is for five (5) years. The DISTRICT reserves the right to negotiate an extension of this contract for one or two additional years, solely within its discretion. The DISTRICT is hereby given authority to negotiate an extension of this contract as stated above; exercise cancellation, and approve all changes to scope of contract as it is deemed necessary.

- 4.2 CONSULTANT shall supply the "Deliverables", including all supplemental technical documents, as described in Exhibit "A", to the DISTRICT within the time specified in Exhibit "A". CONSULTANT shall not be responsible for delays not within its reasonable control. The number of copies of the "Deliverables" to be submitted shall be as required by Exhibit "A".

SECTION 5 PAYMENTS TO CONSULTANT

5.1 Compensation

For both Basic Services and authorized Additional Services rendered, the DISTRICT shall pay the CONSULTANT an amount based on the "Schedule of Hourly Rates" as specified in Exhibit "B", paid to employees assigned to the PROJECT, plus Direct Project Expenses, Computer Services and the Costs of Sub-consultants, all as specified therein.

CONSULTANT will invoice DISTRICT monthly for services rendered in accordance with CONSULTANT's current Schedule of Hourly Rates set forth in Exhibit "B". The Schedule of Hourly Rates shall be updated on January 1 of each year.

5.2 Direct Project Expenses

Direct Project Expenses means the actual expenses incurred in connection with the PROJECT for: transportation and subsistence incidental thereto; toll telephone calls and telegrams; reproduction of reports, drawings, specifications, and similar PROJECT-related items; computer services; and other

expenses of a similar nature. Direct Project Expenses will be invoiced in accordance with CONSULTANT's current Standard Rates for Miscellaneous Expenses set forth in Exhibit "B".

5.3 Sub-consultants

The CONSULTANT will invoice DISTRICT monthly for services rendered by Sub-consultants in accordance with the Sub-consultant's Rate Schedule set forth in Exhibit "C". The CONSULTANT shall be paid ten (10) percent of the Sub-consultant invoice to compensate for the CONSULTANT's processing of the Sub-consultant's invoices.

5.4 Payments by DISTRICT

Monthly invoices shall be paid by DISTRICT within thirty (30) calendar days of receipt thereof unless, within such thirty-(30) day period, DISTRICT notifies CONSULTANT in writing of its objection to the amount of an invoice, together with DISTRICT's determination of the proper amount of such invoice. Such notices shall be accompanied by DISTRICT's payment of any undisputed portion of the invoice. If DISTRICT shall give notice to CONSULTANT within such thirty-(30) day period, such dispute over the proper amount of such invoice statement shall be resolved, and after final resolution of such dispute, DISTRICT shall promptly pay CONSULTANT the amount so determined, less any amounts previously paid by CONSULTANT with respect to such monthly invoice.

5.5 Compensation Amount

5.5.1 Basic Service

For services set forth in Section 2, pursuant to paragraphs 5.1 through 5.4 inclusive, DISTRICT agrees to pay CONSULTANT a maximum sum not to exceed \$1,225,260, including sub-contractor costs, server hardware, and secure server site.

5.6 Extra Work

Work performed at the request of the DISTRICT outside the limits specified in this AGREEMENT is to be designated as extra work. Such extra work, if required, may be incorporated through separate addendum at a later date.

SECTION 6 GENERAL CONSIDERATIONS

6.1 Termination

The obligation to provide further services under this AGREEMENT may be terminated by either party upon fourteen (14) days' written notice. In the event this AGREEMENT is so terminated, CONSULTANT shall be compensated at CONSULTANT's applicable hourly rates as set forth in Exhibit "B", on a pro rate basis with respect to the percentage of the PROJECT completed as of the date of termination. In no event, however, shall CONSULTANT receive more than the maximum specified in paragraph 5.5 above.

6.2 Controlling Law and Jurisdiction of Disputes

This AGREEMENT is to be governed by and construed in accordance with the laws of the State of California. The parties hereto further agree that the sole jurisdiction and venue for any dispute hereunder shall be the County of San Bernardino, State of California.

6.3 Successors and Assigns

- 6.3.1 DISTRICT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this AGREEMENT and the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this AGREEMENT.
- 6.3.2 Neither DISTRICT nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except as stated in paragraph 6.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent CONSULTANT's, associates and subcontractors, as he may deem appropriate to assist him in the performance of services hereunder.
- 6.3.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than DISTRICT and CONSULTANT.

6.4 Notices

All notices required to be given to the CONSULTANT hereunder shall, unless otherwise agreed, be in writing and shall be given by United States mail, certified or registered, postage prepaid, addressed to:

Mr. Jeffrey D. Endicott, P.E.
Associate
Camp Dresser & McKee Inc.
2920 Inland Empire Boulevard, Suite 108
Ontario, CA 91764-4802

All notices required to be given to the DISTRICT hereunder shall, unless otherwise agreed, be in writing and shall be given by United States mail, certified or registered, postage prepaid, addressed to:

Mr. Ken A. Miller, P.E., Flood Control Engineer
San Bernardino County Flood Control District
825 E. Third Street
San Bernardino, CA 92415-0835

Either party may change his address for purpose of this paragraph by written notice to the other party given in accordance with the requirements of this paragraph.

6.5 Remedies

All remedies provided in this AGREEMENT shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to either party at law or in equity.

6.6 Indemnification and Insurance

6.6.1 Indemnification

The CONSULTANT agrees to indemnify, defend and hold harmless the DISTRICT and COUNTY and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising from CONSULTANT's negligent acts, errors or omissions and for any costs or expenses incurred by the COUNTY on account of any claim therefore, except where such indemnification is prohibited by law.

6.6.2 Insurance

Without in anyway affecting the indemnity herein provided and in addition thereto, the CONSULTANT shall secure and maintain throughout the contract the following types of insurance with limits as shown:

Workers' Compensation – A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the CONSULTANT and all risks to such persons under this AGREEMENT.

Comprehensive General and Automobile Liability Insurance – This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

Errors and Omissions Liability Insurance – \$1,000,000 single limits and \$3,000,000 in the aggregate or

Professional Liability Insurance – Coverage shall be in an amount not less than three million dollars (\$3,000,000) aggregate and CONSULTANT shall maintain such coverage for at least one (1) year from the termination of this AGREEMENT. If the District elects to require a project specific insurance policy, the cost for the policy shall be charged to the project as a direct project expense and the upper limit for the contract shall be increased to reflect the invoiced cost.

Additional Insured – All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the COUNTY and its officers, employees, volunteers, as additional insured with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights – Except for Errors and Omissions and Professional Liability, CONSULTANT shall require the carriers of the above required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, CONSULTANT's and sub-consultant.

Policies Primary and Non-Contributory – All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

Proof of Coverage – CONSULTANT shall immediately furnish certificates of insurance to the County Department administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CONSULTANT shall maintain such insurance from the time CONSULTANT commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this AGREEMENT, the CONSULTANT shall furnish certified copies of the policies and all endorsements.

Insurance Review – The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements, to

require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk.

Any such reduction or waiver for the entire term of the AGREEMENT and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this AGREEMENT. CONSULTANT agrees to execute any such amendment within thirty (30) days of receipt.

6.7 Licenses

CONSULTANT shall procure and keep in force during the term of this AGREEMENT all necessary licenses, registration, certificates, permits and other authorizations as are required by law in order for CONSULTANT to render its services hereunder. CONSULTANT shall require all specialty Sub-consultants to comply with the provisions of this paragraph.

6.8 CONSULTANT Not Agent of DISTRICT

The CONSULTANT is not authorized to act as the DISTRICT's agent hereunder and shall have no authority, expressed or implied, to act for or bind the DISTRICT hereunder, either in CONSULTANT's relations with specialty sub-consultants, or in any other manner whatsoever except as elsewhere provided for herein.

6.9 Amendment

This AGREEMENT shall not be amended or modified other than in writing signed by the parties hereto or their successors.

6.10 Accounting Records

CONSULTANT will maintain accounting records, which will include time cards, job cost records, invoices and such other data necessary to identify PROJECT costs. Said records will be made available to DISTRICT's and CITIES' authorized financial personnel for inspection at CONSULTANT's office upon request, during normal business hours.

CONSULTANT shall maintain all records and management books pertaining to local service delivery and demonstrate accountability for contract performance and maintain all fiscal, statistical, and management books and records pertaining to the program. Said records shall be kept and maintained within the County.

Records, should include, but are not limited to monthly summary sheets, sign-in sheets, and other primary source documents. Fiscal records shall be kept in accordance with generally accepted accounting principles and must account for all funds, tangible assets, revenue and expenditures.

All records shall be complete and current and comply with all AGREEMENT requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding of payments for billings submitted and for termination of the AGREEMENT.

6.11 Validity

The validity, interpretation, construction and effect of this AGREEMENT shall be in accordance with and be governed by the laws of the State of California. In the event any provisions hereof shall be finally determined to be unenforceable or invalid, such unenforceability or invalidity shall not effect the remaining provisions of the agreement which shall remain in full force and effect, provided the intent of this AGREEMENT is not frustrated.

6.12 Headings

The headings of the sections of this AGREEMENT are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

6.13 Entire AGREEMENT

The AGREEMENT, including the exhibits hereto, constitutes the entire AGREEMENT between the parties.

6.14 Waiver of Rights

Either party's failure to enforce any provision or provisions of the AGREEMENT shall not in any way be construed as a waiver of any such provision or provisions, or prevent that party thereafter from enforcing each and every other provision of this AGREEMENT.

6.15 Changes in Deliverables

In the event that any changes are made in the deliverables provided hereunder, by the DISTRICT or persons other than CONSULTANT, which affect CONSULTANT's work, any and all liability arising out of such changes is waived as against CONSULTANT and the DISTRICT assumes full responsibility for such changes unless DISTRICT has given CONSULTANT prior notice and has received from CONSULTANT written consent for such changes.

6.16 Care and Skill

In the performance of its professional services hereunder, CONSULTANT will use that degree of care and skill ordinarily exercised under similar conditions in similar localities and no other warranties expressed or implied, are made or intended in any of CONSULTANT's proposals, contracts or reports.

6.17 Codes and Standards

Whenever reference is made in the AGREEMENT to standards or codes in accordance with which work is to be performed, the edition or revision of the standards or codes current on the effective date of this AGREEMENT shall apply, unless otherwise expressly stated.

6.18 Equal Employment Opportunity

CONSULTANT agrees to comply with the provisions of the Equal Opportunity Program of the COUNTY and the rules and regulations adopted thereto. Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act, California Public Contracts Code 2000 and the COUNTY M/WBE Policy No. 11-15, and other applicable Federal, State and COUNTY laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. Information on these rules and regulations may be obtained from the Office of Small Business Development at (909) 387-2169.

6.19 Conflict of Interest

CONSULTANT shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the District. CONSULTANT shall make a reasonable effort to prevent employees, vendors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being; motivated by a desire for private gain for themselves or others such as those with whom they have family, business, or other ties.

Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and State law, including Section 23-602 (Code of Conduct) of Chapter 23-600 of the CDSS Manual of Policies and Procedures. In the event that District determines that a conflict of interest situation exists, any increase in costs associated with the conflict of interest situation may be disallowed by District and such conflict may constitute grounds for termination of the AGREEMENT.

This provision shall not be construed to prohibit employment of persons with whom CONSULTANT's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

6.20 Confidentiality

CONSULTANT shall require its officers, agents, employees, volunteers and any subcontractor to comply with the provisions of Section 10850 of the Welfare and Institutions (W & I) Code and Division 19-000 of the Department of Social Services Manual of Policies and Procedures to assure that:

A. All applications and records concerning any individual made or kept by any public officer or agency or CONSULTANT in connection with the administration of any provision of the W & I Code relating to any forms of public social services for which funds are received by the CONSULTANT under this AGREEMENT, will be confidential and will not be open to examination for any purpose not directly connected with the administration, performance, compliance, monitoring or auditing of such services.

B. No person will publish or disclose, or use or permit, or cause to be published or disclosed or used, any confidential information pertaining to any applicant or recipient of services under this AGREEMENT.

C. CONSULTANT agrees to inform all subcontractors, sub-consultants, employees, agents, and partners of the above provisions and that any person knowingly and/or intentionally violating the provisions of this article is guilty of a misdemeanor.

6.21 Recycled Product Purchasing

The COUNTY has adopted a recycled product purchasing standards policy which requires the use of recycled paper for any printed or photocopied materials created as a result of a contract which the COUNTY and/or the DISTRICT. CONSULTANT agrees to comply with these provisions. The policy also requires the use of both sides of paper sheets for reports submitted to the COUNTY and/or DISTRICT whenever possible.

6.22 Software Licenses

CONSULTANT shall procure the necessary commercial software to fulfill the requirements of the project. The licenses of these software applications are governed by the companies that sell the software and will be transferred to the DISTRICT after system acceptance. During the development and integration period, CONSULTANT will hold the licenses. CONSULTANT has assumed that the DISTRICT does not intend reprogram these packages (as in Word, Excel or the database) as these software are open enough to be configurable.

As for the applications, reports, and database queries that CONSULTANT will be developing/customizing for the project, the code will be transferred to the DISTRICT to modify as they see fit. The DISTRICT shall notify the CONSULTANT prior to making modifications during the maintenance period. The DISTRICT is responsible for the modifications that it makes.

The application program that Azteca will provide falls under the commercial category. The application will be configured by the CONSULTANT and sub-consultant Azteca to meet the requirements of the contract. Any code that will be developed by the CONSULTANT to link the project database to the Citiworks software falls under the CONSULTANT application category and will be provided to the DISTRICT.

6.23 Title and Security

DISTRICT acknowledges that CONSULTANT retains all title to the software contained within the system. DISTRICT is neither the owner of said software nor any copies thereof. CONSULTANT acknowledges that the database contents shall remain the property of the DISTRICT and shall not be released or transferred without DISTRICT approval. DISTRICT acknowledges that the database structure contains CONSULTANT trade secrets and intellectual property rights and therefore shall remain the property of

CONSULTANT. The database structure may not be copied, modified, or reproduced in whole or in part, for any purpose except backup and restoration. The database structure may not be reverse engineered, de-compiled, disassembled, or otherwise reverse engineered in whole or in part. Should CONSULTANT fail to perform under the terms of this AGREEMENT or become insolvent, the terms of the software escrow account (see 6.22) shall be in effect.

6.24 Source Code Provision

Within ninety (90) days of the installation date for any CONSULTANT or subcontractor software (but not commercial software), CONSULTANT shall deposit in an escrow account suitable to the District, one (1) copy of all source code and all related documentation, including documentation necessary for compilation of the source code, of all CONSULTANT and subcontractor application software products (but not commercial software) provided under this Contract. CONSULTANT shall place future updates, bug fixes, new releases, etc., and associated user, system, and source documentation (but not commercial software) in said escrow account within ninety (90) days of their installation date where these items are included in the scope of services. DISTRICT reserves the right to, as its sole cost; verify all deposits for their accuracy and content. CONSULTANT understands and hereby acknowledges that failure on the part of CONSULTANT to maintain timely and accurate escrow deposits may result in unknown and undetermined damages to DISTRICT in the event CONSULTANT subsequently discontinues support (for any reason) for the products provided under this Contract.

In the event CONSULTANT discontinues support of the application software licensed under this Contract for any reason, DISTRICT shall have access to the source code as a named Licensee under the terms of the escrow account, so that DISTRICT may continue operation and maintenance of the system. DISTRICT stipulated that this provision shall remain in effect only as long as DISTRICT remains current as a maintenance-paying customer of the application software provided under this Contract.

IN WITNESS WHEREOF, this AGREEMENT, consisting of 11 pages plus Exhibits A, B, and C, has been fully executed on behalf of the CONSULTANT by its duly authorized officers, and the DISTRICT has caused the same to be duly executed in its name and in its behalf by its duly authorized representatives, effective as of the date herein written below.

SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT

► _____
Dennis Hansberger, Chairman

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Clerk of the Board of Supervisors
of the County of San Bernardino.

By _____
Deputy

Camp Dresser & McKee Inc. (CDM)

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name Jeffrey D. Endicott, P. E.
(Print or type name of person signing contract)

Title Associate
(Print or Type)

Dated: _____

Address 2920 Inland Empire Boulevard, Suite 108

Ontario, CA 91764-4802

Approved as to Legal Form

► _____
County Counsel

Date _____

Reviewed by Contract Compliance

► _____

Date _____

Presented to BOS for Signature

► _____
Department Head

Date _____